UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
JUDGES DIVISION

UNITED STATES POSTAL SERVICE Respondent and CONNIE SANCHEZ, Charging Party	)))))))	10-CA0-223776

RESPONDENT'S POST-HEARING BRIEF

This case concerns allegations of coercive statements involving the futility of filing grievances and the claim that Charging Party, Connie Sanchez, was the victim of retaliatory reprisal when she was removed from the work schedule as a Rural Carrier Associate in May 2018. While there is disputed evidence to support the alleged improper statements, there is no evidence at all that supports a claim of hostility or connected retaliation related to the removal.

Ms. Sanchez was not disciplined in any way. Nor was any protected activity considered in the decision. Rather, the United States Postal Service (USPS herein) was forced by compelling circumstances beyond its control to both act and act quickly. At the time, Sanchez (or CP herein) was working in extreme heat, against her physician's repeated prohibitions because of a serious medical condition related to asthma. Though USPS had attempted to accommodate CP's condition by letting her wear a mask and take a standard break, two things occurred that made it impossible to continue the arrangement. Sanchez began taking numerous, excessive and unauthorized breaks – so often that they substantially disrupted operations – and the outside temperatures rose substantially to well above the levels her doctors permitted. The breaks were problematic for USPS operationally, but also demonstrated that CP was unable to

control her physical and medical needs consistent with the previously agreed restrictions. Her work was suffering, and it became clear that that she was no longer capable of complying with her own doctor's limitations. The other, more pressing factor was CP's deteriorating health due to the increasing heat. On Friday, May 11, 2018 CP reported being essentially overcome by the extreme heat (it appears to have been at least 94 degrees that day in Georgia). She then reported out sick with migraines, chest pains, shortness of breath, dizziness, and other symptoms that were confirmed to be "heat exhaustion." This illness did not subside immediately. Instead it lasted for many days and CP reported being seriously debilitated by it. Within a week or so, on May 23, CP's doctor submitted another note saying CP could not work in the heat or in extreme weather. By then, USPS had just taken CP off the work schedule on May 21. Sanchez was able to return to the work schedule once her doctors and USPS agreed on accommodations that were both safe for her and consistent with her job duties. Unfortunately, that return took a long time for reasons that were well beyond the company's control, and in some ways CP appears to have thwarted the process that might allow her to return sooner. Regardless, CP's physicians consistently would not permit CP to work in the heat, or extreme weather or in many other conditions that are part of the job. Her physicians eventually suggested restrictions, but ones that were incompatible with CP work duties. Only when both sides could agree on suitable accommodations was CP able to return.

Due to CP's deteriorating performance (excessive breaks and extremely late deliveries) USPS attempted to discuss the problems CP was having in order to correct them. CP resisted. CP's performance continued to deteriorate. Those performance shortcomings presented a dilemma as they were clear incidents of what would otherwise be considered misconduct and unsatisfactory performance (deficiencies that are expressly grounds for just cause removal under

the union contract). As CP's performance continued to suffer, she also refused to address it and claimed a right to take whatever time she felt necessary to complete her work. When USPS attempted to have a formal interview, CP did not show up. The manager initiated consideration of discipline to respond to both the extreme performance issues as well as the failure to show up for the interview. That consideration of discipline never went anywhere and was shortly abandoned, without informing Sanchez of it.

When the manager first attempted to address the performance issues with CP she became angry and defensive and at some point claims to have threatened the manager that she would file EEO charges due to harassment. Based on CP's own threat to file charges, CP believed that her subsequent removal from the schedule was retaliatory. Thus, Region 10 issued complaint. Despite her belief, there was no connection between CP's removal from the schedule and her protected activity. The decision to remove her was based on safety concerns, while USPS tried to figure out what to do to possibly accommodate her while not allowing her to work in the heat and risk further injury, and over her doctor's prohibitions. Those safety concerns naturally also were intertwined with operational concerns, as CP's professed health needs (breaks and delays) caused serious disruption in productivity, scheduling, mail-deliveries, budget, etc. So while CP's health and USPS's needs for efficiency generally were intertwined, the primary, if not exclusive basis for taking Sanchez off the schedule so quickly, was her health – and then immediately followed by her doctor's orders. The operational concerns may well have been some supplemental consideration as well, as they had to be for any business with deadlines – and especially the Postal Service, which has to "get the mail out." But CP's PCA played no role at all, and there is no evidence whatsoever to the contrary, beyond CP's suspicion.

Sanchez also claims that the manager told her that filing grievances was futile, and that the manager was often too rushed to sign grievances or was rude to her. She also claimed that the manager's attempt to talk with her about her performance or cajole her into performing properly and on time was "harassment" and intentional abuse. It seems possible that given the fast pace, the short staff, the repeated delays, late arrivals, serial absences of others, and CP's own performance issues, when the manager was too busy to stop what she was doing to address CP's concerns she may have been short with her. To the extent that CP alleges that the manager told her that others would believe her (the manager) over CP (and thus grieving might be useless) if she said anything remotely like that she was expressing indifference. She was alleged to have said "I don't case." Even that much does not suggest hostility toward CP for her PCA. In no way does it suggest a propensity to retaliate later. Others also claimed the manager was dismissive of their grievances related to their gripes about the delivery schedule. Ms. White certainly knew that the delivery schedule (and the work standards associated with them) were completely out of her control and were (practically speaking) not subject to meaningful challenge because of the careful way they are made, the participation of the employees and their union. It is again conceivable that the manager may simply have evaluated the unlikely merits of the grievances and was dismissive of the merits themselves and the chances of success. That's not much different than actually denying the grievance outright. Whatever the words were that were actually used, they did not convey hostility, nor reprisal. And it is unclear from the co-workers what was actually said since they expressly swore nothing was said when the issues were fresh but then had a change of heart (and story) at trial some 19 months later.

Regardless of the possibility that some form of lack of merit was uttered it was not coercive or hostile. And that slender reed is not by itself sufficient to then infer hostile motive

related to the removal. More than that is necessary, especially now under the Board's more exacting standard. However, even if hostility could be conjured as a possible consideration, it is certain USPS would have taken the same action as if no PCA existed. USPS was compelled by law, by CP's own doctors, and by any sense of ethics or at least liability to have acted, and acted expediently. It had no choice. None. USPS faced the same choice – with CP – on two other occasions, and did the same thing, in the absence of PCA then. In March 2018, CP was not permitted to work due to the exact same concerns about her health. Upon her return, and shortly before trial, CP was injured again, and was again sidelined until it was considered safe for her to work, also in the absence of PCA. And that most recent incident was far less significant than this one and there was no doctor then prohibiting CP from working. It was just to be on the safe side. It is clear then that USPS would not merely have made the same "choice" in the absence of PCA. Rather, USPS would have had no choice at all. Sanchez' removal was dictated by circumstance beyond its control, and dictated by CP's own doctors. PCA was irrelevant completely.

The removal of Charging Party Connie Sanchez from the schedule is characterized by General Counsel as reprisal. That argument is based on the timing that was soon after Sanchez and her boss, Veronica White had words about Sanchez' performance and Sanchez objected that she was entitled to take frequent breaks. There is no evidence that hostility for union activity or raising work rights played any role. While General Counsel alleges White may have been rude or too rushed to address grievances, and even if she allegedly stated grievances were useless, there is no evidence that she harbored animosity toward Sanchez, for any reason let alone because of grievances. There is no evidence that removing Sanchez from the schedule was done "because of" any PCA. The union steward who filed lots of grievances faced no reprisal. Others threatened and indeed filed charges and also demanded (and received accommodations) and yet

none of them were threatened or disciplined or faced reprisals in any way. There is no reason to single Sanchez out to presume malice.

The only factor even remotely suggesting reprisal and hostility is the bare "inference" that GC claims from proximity and the close timing. But inferences must be based on something substantial and compelling. GC doesn't merely get to "guess" about motive and speculate about it and then claim some compelling "inferential presumption" merely because PCA was followed closely by adverse action.

Here the inference based on temporal proximity is not merely unwarranted, but unavailable because it is wholly unreasonable. Inferences are based on the absence of a known fact and an inference is used to fill in the factual gap based on two things: compelling evidence of the inferred fact and the absence of other reasonable alternatives.

In this case two things are undeniable. CP had a hypersensitivity to heat causing her dire health problems including heat exhaustion bordering on heat stroke in March and again in May and her own doctors prohibited her from working in extreme heat. That is the bolus of fact one. Fact two is that Sanchez took extreme amounts of time to deliver her mail, and that such late deliveries were prohibited, costly and express grounds for termination under the CBA.
So there were two indisputable bases that had nothing to do with PCA but providing not just reasonable, but compelling and (in the instance of CP's health) mandatory bases not only for action, but immediate action.

All by itself, when CP suffered her second collapse on May 11, USPS was compelled in every way to take quick action. That by itself is determinative in eliminating any contrary inference that somehow the timing was suspicious and a basis to presume malice.
So too with the performance issues, though not as dire in terms of the risk of actual death.

Sanchez' performance was atrocious and created all sorts of problems for USPS, her co-workers, the budget, timely mail delivery and a host of other very real concerns. The effects of her slowness are based in her CBA. She was required to deliver her route in the time allotted and could be fired for failing to do so.[1] By failing to meet expectations, she provided a compelling reason for action. But due to the effects of her continued and unapologetic poor performance, and with no end in sight, quick action was also compulsory.

These were not after-thoughts, nor shifting defenses, and neither were they flimsy excuses. CP's health was on the line and USPS could not afford to wait. The efficient operations of the Postal Service, and prompt delivery is also a compelling factor, especially these days. CP could not be permitted to slow the mail, yet she continued to do so, again without apology. In fact, she protested that she had a right to take as long as she pleased.

So these two undisputed facts provide a compelling basis for action. But that's not their chief role in the analysis. Here, these two facts eliminate any presumption or suspicion that malice should be inferred merely due to the timing of the removal. Ms. White's concerns both about health and performance were raised on May 7 "before" CPs threat to file charges. That alone eliminates timing as a basis for suspicion. The growing health threat and the expanding performance problems were real and compelling reasons to act and to act quickly.

They are proximate in time to CP's complaining about harassment about her slowness. They are fully connected and part and parcel. Management questioned her performance, and CP bristled at that and threatened action. The performance concerns came first. Of course they are all close in time; they are intertwined. The concerns management had and that lead to action

[1] R24, CBA, Art. 30, Sec. 2. M. These are express grounds for discipline, unusual for a CBA.

were related to her complaints which were based on management's concerns. The fact that PCA is involved doesn't change anything.

GC ignores CP's health issues and performance and looks only at grievances. But that is not the "totality" of the circumstances. No inference is available here, where undisputed facts provide not just a reasonable basis, and not just a compelling reason, but a mandatory basis for quick action. USPS had to act to save CP's life – pursuant to her doctor's orders.

There is no evidence whatsoever that White (or the many others trying to aid CP and keep her safe or deal with the performance issues) had any axe to grind with Sanchez specifically because of any grievances, or threats to file charges or claims for reasonable accommodation. And CP's constant accusation is not evidence. White never said she was bothered in the least by any of CP's PCA. Quite the contrary, according to CP White was dismissive of it and seemingly unconcerned. Thus even if the alleged claims of futility are true they do not prove hostility, though perhaps frustration and certainly indifference. There is no other evidence and the claims of futility are not evidence of hostility.

No inference is available under the law where, as here, there are compelling facts that answer the question of "why" and "why now." It's because CP's health depended on it, according to her doctors. So an inference of malice and an inference that malice caused action (nexus) is legally impossible. There is nothing more than suspicion.

The only case GC might have had would have been if Ms. White had told Sanchez explicitly that she was angry about CP's PCA and that she would hold it against her and evidence that she did indeed take action because of PCA. Of course none of that happened. But if it had, and hostile motive played some role in considering adverse action, only then would the burden shift and *Wright Line* come into play. Even then, USPS had compelling reasons for the

action it took: Sanchez' health was at stake and we were legally, ethically and financially obligated to do what her doctors said: not let her work in the heat. We had to take that seriously even if Sanchez herself did not. We could not go against doctor's orders just because Sanchez needed the money and wanted to work, oblivious of the consequences.

It might be tempting for GC to believe that CP's health wasn't really at stake, and that we didn't really have to follow the doctor's restrictions, and that by letting CP work in April, we established a practice that only Sanchez herself could end, and that USPS wasn't really concerned and was just harassing CP about slowness. Any such doubts about the heat and its consequences were put to rest at Sanchez' second heat stroke on May 11. That is the triggering event. It is a fact that cannot be ignored. It compelled USPS' actions, as did many other facts at the time, including CP's related poor performance. None have anything to do with PCA.

Even the abandoned consideration of discipline is not a factor weighing into the mix. First, management never took action. Second, Sanchez was not aware of it. Third, it was fully justified by White's concerns about performance. And the timing was again fully reasonable based on the six out of six consecutive work days of extreme slowness, failure to make deliveries on time, and then the apparent refusal to appear for an investigative discussion. White had already tried repeatedly to talk with CP about her slowness and CP angrily rebuffed her at every turn. It was White's attempt to talk about poor performance that triggered CP's threats to file charges, not the other way around. When CP refused to talk or answer questions or address White's performance concerns, White had every right and obligation to bring her in for an interview. There's nothing whatsoever untoward about that effort.

When CP appeared to have refused the direct order to come in and talk, that also appeared to be a form of insubordination. So even if discipline was not preordained related to

performance, the combination of performance coupled with insubordination seemed to provide a reasonable basis to pursue discipline.

There is nothing more to this case than allegations of claims of futility. Even that much suffers from the accusers' contradictory, self-serving and prodded testimony offered despite expressly contrary prior sworn statements.

Statement of Proposed and Undisputed Facts

Although the record contains a great deal of testimony, documentary evidence provides an ample and sufficient roadmap and an indisputable basis to resolve most of the disputed issues.

CP's Emergency Medical Problem & Subsequent Restrictions by Her Doctors

Ms. Sanchez ("Sanchez," "Charging Party," or "CP") was employed by the United States Postal Service and in 2017 while working in Augusta, SC she was injured on the job and sustained a condition that resulted in a form of asthma which made her susceptible to respiratory illness. That illness ("RADS") resulted in hypersensitivity to heat, cold, humidity, chemicals, changes in weather, dust, etc.[2]

Sanchez then started working as a Rural Carrier Associate in Ludowici, Georgia in 2017. After her injury, CP filed a claim with the Office of Workers' Compensation Programs ("OWCP"). Though OWCP accepted CP's injury incident as compensable it denied her claim for continuing benefits for loss of pay in the future. As a result, while CP claimed on-going OWCP rights and benefits, when she arrived at Ludowici she did not actually have an "accepted"

[2] Respondent's Exh. 25, dated May 23, 2018; GC5. Exhibits are referred to as R# and GC#, etc.

claim. R26, pg. 6. Because of that denial CP was barred (initially) from any "limited duty" accommodations that are otherwise extended to employees who have accepted claims. Tr. 358.[3]

As a Rural Carrier Associate ("RCA") CP's job required her to drive and walk outdoors in all seasons and be "subject to outside exposure," "temperature extremes" and "high humidity," "chemicals," "fumes/dust."[4] These are the same irritants that CP was then "hypersensitive" to due to her RADS medical condition.

Emergency Trip to Hospital Due to 90-degree Heat, Restriction from "Extreme Heat"

In March 2018 while working in 90-degree heat Ms. Sanchez was overcome and needed ambulance transport to the emergency room. She was out sick for 10 days due to the severe illness and its effects.[5] On March 26, CP presented her doctor's "Return to Work" certificate dated March 23.[6] That RTW note listed CP's "restrictions" as "Patient is to refrain from environments with extreme heat, humidity or dusty environments."[7] To clarify what was meant by "extreme heat" CP provided a second Dr. note also on March 26 (also dated March 23) also by Dr. Ryan. In the second March 23 note, the restriction was clarified further and stated: Patient is to refrain from exposure to excessive heat or cold as defined by 10 degrees higher or lower than the average temperatures for that climate. Patient is also to refrain from exposure to excessively dusty environments, chemical exposure and damp or moldy environs. Patient is to

[3] Citations to the Transcript are shown as "Tr" followed by the page number.
[4] R29, RCA Job Description, pg. 42. Admissibility was disputed about R29 absent the medical dated 05/23/2018. That issue is settled. R25 is that "medical" dated 5/23/18. See R25 lower left corner (for date) from CP's physician. R29 contains the same narrative of irritants and limitations including "triggers-bleach" as are found in R25 (last paragraph) so it is clear that the medical dated 5/23/18 (R25) is the same document as is referred to as the "Medical dated 05/23/2018" in R29.
[5] GC5
[6] All dates referred to are in 2018, unless otherwise shown.
[7] GC2.

wear a mask to avoid these allergens." GC3. In neither of the March 23 notes is there any reference to "breaks," "frequent breaks" or "cool-down breaks."

CP Offers her own Medical Diagnosis and Restrictions Unauthorized by Her Doctor

On or about April 6, CP provided her own description to USPS of her medical problems and her proposed accommodations and restrictions.[8] She described that the Postmaster (Ernest Warden) told her she could not work with restrictions and that all her restrictions had to be lifted "completely" before she could return to work.[9] In her own self-diagnosis, CP described what she claimed her physician had told her verbally. She asked to be permitted "to take frequent breaks" and that she "shorten her work day" during extreme heat or excessive pollen and that she be permitted "to work during the coolest part of the day" and that she be allowed to wear a mask in the office to guard against dust, etc. She also asked that her work area ("case") be cleaned more frequently and dusted, that she be provided a hands-free tinted window for her personal vehicle. None of these other demands were mentioned by CP's physician(s), nor accepted by USPS.

At that time, because CP's OWCP claim had been denied she had no right to "limited duty" which is predicated on an accepted OWCP claim. Tr. 358-59. And there is no such thing as light duty for rural carriers. Tr. 357; R24, pg. 74.

Sanchez has said repeatedly that when she first spoke with Postmaster Warden he told her she could not work with any restrictions and that in order to work as an RCA all of her restrictions would have to be lifted. R8. Warden offered to try to help further but needed CP to

[8] GC5. Despite knowing her OWCP claim was denied, CP requested accommodations under OWCP.
[9] This is the identical situation and requirement she confronted in May 2018 (with Postmaster White), which prevented her from working until the restrictions were removed. Shaun Smith also stopped CP from working until she could be cleared when she was hit in the head by a fallen tile.

sign a medical release allowing the health nurse to speak with CP's physicians so that they could see if some accommodation might be reached. She refused to do so.[10]

On April 11, Postmaster Warden sent an email to Mike Jakob, (Acting) Health and Resource Manager and LaSandra Crawford, Labor Relations Specialist, stating that Sanchez had given him two documents (the Return to Work Certificate and her own Request for Reasonable Accommodations) and asking whether he could allow her to work with "these" restrictions.[11] Jakobs responded by emailing Warden back and directing Warden: "Ask her what she wants as an accommodation."[12] Warden responded by email saying: "Just to have a Mask if it get dusty, and to take a cool down break if needed. I see no problems."[13]

Subsequent to Postmaster Warden's request and comment, Jakobs emailed him back and said: "I'm checking with the DRAC chairman to see if you need to do anything else other than say ok."[14] There is no further email communication confirming that the restrictions of "a mask" and "a cool down break" were accepted by the DRAC chairman or whether there were any further instructions. It appears that Postmaster Warden's mere request was treated as the sole documentation of the accommodation/restriction claimed by CP. USPS Labor and Human Resources specialists were deeply involved however. And after a great deal of discussion about the heat and how a break would be defined, USPS settled on allowing the mask and letting CP use the same 30-minute break time that all carriers were permitted under the CBA, no more. Tr. 368-69. The second doctor note also was ambiguous in defining extreme temperature as 10 degrees above or below normal. The consulted studies and reports and determined the average

[10] R7, pg. 1; R8; Tr. 198.
[11] GC30, pg. 1, 2:24 pm.
[12] GC30, pg. 3, 3:28 pm.
[13] GC30, pg. 3, 3:50 pm.
[14] GC30, pg. 3, time undisclosed and "From: _" not shown (cut off by GC Exhibit production)

temperature for Ludowici as 75 degrees and then applied the 10 degree increase or decrease accordingly. Thus CP could not work in extreme heat, defined as above 85 degrees. Tr. 361-364. CP protested that she wanted to work anyway, but management advised her that was not her choice, explaining that they "could not put you at risk." Id.

Mr. Warden retired approximately two weeks later on April 27. When Veronica White took over on Monday April 30, she had no idea about any medical restrictions or special accommodations for CP or emails from Mr. Warden. Later, she looked and couldn't find any.[15]

LaSandra Crawford, the Labor Relations Specialist working on CP's case in March/April testified about the running dispute about the multiple restrictions that CP claimed both from her doctor and those she requested on her own. Tr. 361-72. Crawford testified without contradiction that the only restrictions that were appropriate to consider were those from CP's medical providers rather than CP herself. At that time, the temperatures were mild enough to permit CP to return to work. There was no issue about wearing a mask, and all rural carriers are permitted to take a 30-minute break for lunch such that CP's requirement for "a cool down break" of 30 minutes was essentially the same thing as what the CBA already allowed. CP could take that break time in increments if she liked, totaling 30 minutes. There was no agreement to allow unspecified multiple breaks, frequent breaks or any breaks beyond what the already CBA permitted. Tr. 367-68, 370, 375; GC30, pg. 3. Crawford explained at length that USPS cannot accommodate unspecified breaks of any duration that the employee deems necessary. Neither she nor others agreed to frequent or lengthy breaks beyond 30 minutes. Essentially, the only restriction CP was allowed (other than wearing a mask, and the existing contractual lunch time) was that she was prohibited "restricted from" working in extreme temperatures (hot or cold).

[15] Tr. 316-17.

Sanchez denied that she should be prevented from working in any temperature, regardless of how hot it was. According to Crawford (and consistent with CP's own testimony) Sanchez urged that she alone would judge when it was too hot to work, and if she felt it was too hot, she would take "breaks" – "as needed." Tr. 364-65. This undefined amount of time off from working was unacceptable to management for a variety of reasons. Crawford testified that Sanchez' request to both ignore the doctor's clear prohibition and determine on her own when she could work was unacceptable and would pose risks for CP's health and would create unacceptable liability for the Postal Service in the event of a heat-related illness permitted by USPS ignoring express doctor orders. She stated unequivocally that Sanchez' request to take multiple and prolonged breaks was never accepted.

Sanchez presented a "Request for Light Duty" dated April 12 which appears to have an "x" in the space for "can be accommodated" but contains no substantive information or discussion or list of restrictions or accepted limitations.[16]

The collective bargaining agreement between the Postal Service, and CP's union, the National Rural Letter Carriers Association ("NLRCA")[17] states explicitly that: "In the rural carrier craft, at any local installation, regular rural routes shall not be considered for any light duty assignment." "No Light Duty Assignments" Article 13, Section 3.[18]

On April 12, CP returned to work. Her schedule and time card information reflect that she performed her delivery work on Route 5 in the exact evaluated time both days. She worked 8.67 hours April 12 and she worked 8.58 hours April 13. She started at 8:00 am both days and

[16] GC6
[17] Also referred to as Postal Service "Handbook EL-902" (dated 2015-2018)
[18] See also Crawford Tr. 357 (There is no light duty in the rural carrier craft. It's all or nothing.)

returned to the facility punctually at 4:50 pm both days and clocked out at 5:05. She took 25 minutes for lunch one day and 30 minutes the next. All of her time and lunch breaks were consistent with the agreement reached the day before.[19]

Notably, CP completed her route (despite returning from illness) in the exact evaluated time, in fact slightly less than the 8.8 hours allotted. More significantly still, she fully used the lunch break she was allowed, and nothing more, and still finished her route on-time.[20]

May 2018 (Well above 90 degrees) CP Takes Frequent/Prolonged Unauthorized Breaks

Beginning at least on April 28, CP started working in an extremely slow manner. The form 4240 that reflects CP's time card entries that she would fill out herself[21] show that CP began taking many more hours to deliver her route than the evaluated time, or the time she had previously taken. On April 28, CP took nearly ten (10) hours to deliver her route.[22] But that 10 hours was not enough for her to complete the route as she received an additional 1.1 hours of assistance on her Route 5.[23] Thus delivering her route took 11 hours that day.

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[19] R22, pg. 2, last 2 rows.

[20] GC22 (form 4240 time entries) pg. 2, last two rows showing time stamps for 4/12 and 4/13, start and end times, return to Post Office, lunch times (S-25, S-30 – meaning lunch recorded as taken on the Street – "S" rather than in the Office – "O." Sanchez frequently denied taking lunches or breaks. Yet her own time card entries show she took her full lunch breaks – and still managed to complete her route in less than the evaluated time. When she tried, she was fully successful.
Respondent also seeks Administrative Notice that it was approximately 03-94 in Ludowici on May 10-11 according to a national weather service. https://www.visualcrossing.com/weather/historical-weather-dashboard?gclid=EAIaIQobChMIgdCh_Na46wIVjuSzCh0_9gbdEAAYASABEgJ74vD_BwE Whereas on March 17, when CP collapsed in the heat the historical temperature is listed as approximately 80-84 degrees. Clearly, it was hotter in May than in March. She was determined to work anyway. On May 7, when CP also used extra hours it was approximately 86 degrees. Given the milder temperatures during many days, there is the possibility that she was milking the clock in order to receive extra pay, rather than suffering in the extreme heat and she may have felt her new supervisor wouldn't notice or challenge. The cause of her delays/failure is secondary to its consequences, however.

[21] See for example Form 1234s by Yarbrough, Tapley, GC32 pgs. 14-17 (employees' handwritten cards)

[22] GC32, pg. 22 (4/28/2018 entries). She also took 35 minutes for lunch.

[23] GC32, pg. 14 (last entry series at bottom of form 1234), See also summary on pg. 12.

The summary of excessive delivery time used by CP, prepared by Veronica White on May 30, shows that CP used a combination of her own work and assistance from others on the following dates: May 4 (12.35 hours), May 5 (11.67 hours), **May 7 (15.45 hours), May 10 (13.24 hours) and May 11 (14.08 hours)**.[24] The need for so many work hours on these days is considered "extreme."[25]

Heat-Related Slowness and Breaks Late April - May – Six Consecutive Shifts

USPS form 4240s for CP show each of her work dates between April 28 and May 11 (the two-week period covered by pay period 10).[26] CP worked six days in the period and needed between 11 – 15 hours to complete her route each of the six days. On each day she worked, she took lunch breaks out on the street ("S"), in addition to any unrecorded break time she took in the office, and unauthorized work cessations while delivering.[27] She took lunch breaks of 35, 15, 20, 25, 30 and 35 minutes.[28] She also had unauthorized but system-tracked "stationary time" of at least 13, 19, 11, 16, 16, and 11 minutes during those days. On May 10 and May 11 in particular she took unauthorized "stationary time" of 30 minutes and 43 minutes – in addition to her recorded lunch time, and unrecorded break time in the office.[29]

[24] GC32, pg. 12 summary; and supporting documents contained in the exhibit (pgs. 14-21)
[25] Tr. 593 Mike Chestnut, who was both a carrier himself and a carrier supervisor and who managed the work standards data (evaluated time analysis) testified that it would have been extreme to need even 11-13 hours to complete an 8.8 hour route and that it is grounds for termination and that he has participated in removals for such unsatisfactory performance. Tr. 593-96. See also R24, Art. 30, Sec. 2. M.
[26] GC32, pgs. 18, 22.
[27] GC32, pgs. 12, 18-21.
[28] Id. at 21 and 18.
[29] Id. at 20-21.

On May 7, Postmaster White sent an email to Claudette Ballard (an injury compensation specialist).[30] White noted that CP was not working proficiently on any route assigned to her and that CP had alleged a lung ailment as the reason for her slowness. White inquired whether CP had any limitations and whether she should even be working if she has lung issues. The next day, May 8, Ms. Ballard informed White that CP did NOT have an accepted OWCP claim as the claim had been denied.[31] In her email, Ballard referred Ms. White to Lisa Wolfe, who was also a specialist and would deal with CP's claims. Ms. White's May 7 raised the issues of CP's health as well as her failure to work proficiently – before any alleged PCA.

Significantly, these concerns predated CP's claim that she informed White on May 10 that she might file EEO charges or other claims of harassment, discrimination or failure to accommodate, which was CP's earliest basis for claiming protected activity and retaliation. Ms. White's concerns could not have been reprisal for any PCA as no such PCA had yet taken place.

May 10 Heat-Related Delays, Breaks, Late Return to Facility and Discussion

On May 10, according to the form 4240 and CP's own timecard upon which the 4240 is based, CP arrived on-time at approximately 8:00 am.[32] She left the facility to make deliveries at about 11:15 am, which was already 30 minutes late. She needed two and one half hours of assistance from other carriers and still arrived late to the facility at 6:45 (18:45).

By this time, White had been working at Ludowici for just over one week. In that span of just five working days for Sanchez (April 28, May 4, May 5 [on route 6], May 7 and now May 10) White knew that CP had already been very late coming back each night, had needed substantial assistance from others, that she had taken repeated unauthorized breaks in the office

[30] R26. pg. 1.
[31] R26, pg. 2.
[32] GC32, pg. 22.

and on the street, in addition to her lunch, and that three of Sanchez' very late arrivals were well past the "dispatch" time for the truck leaving Hinesville to Jacksonville. GC32, pg. 12.

White testified that the Hinesville truck leaves at about 7:00 pm for Jacksonville. The truck from Ludowici to Hinesville leaves around 5:15 - 5:30 pm to take the new mail (picked up from collections boxes along the route) brought back by the carriers. If the outgoing mail does not meet that Ludowici dispatch time (by 5:30), then someone has to drive the mail separately to Hinesville in time to be there by the Hinesville dispatch time (7:00 pm). The drive to Hinesville takes 15-20 minutes. So if it is not driven from Ludowici by about 6:45 it will miss the Hinesville dispatch. Then someone (White) would have to drive the mail two hours each way to Jacksonville (in order to make sure that the outgoing mail got to the distribution facility).[33] White testified that she repeatedly made this long trip when the carrier brought back the mail late. Sanchez brought back mail late, after 7:00 pm three times in just those few days (on May 4 (7:10 pm), May 5 (Rt. 6 – at 8:00 pm!), and May 7 (7:40 pm)). White made round trips to Jacksonville each of the days because Sanchez came back after 6:45, and missed dispatch to Hinesville.[34] White reached out to HR to find out about CP's claimed lung issue and was told that CP's OWCP claim had been denied, and was otherwise unaware of any restrictions CP had.

White also witnessed CP frequently walking away from her case to go talk on the phone, or taking her phone and leaving the air-conditioned office to go out into the heat to talk. Whenever White questioned her about why CP was away from her duties CP claimed she was on a break. But breaks have to be requested and granted or at least recorded officially as part of the lunch period time.[35] And CP did not seek permission or record any office lunch time. Nor does

[33] Tr. 279-281.
[34] Tr. 282, 294, 307
[35] Tr. 309-310, 311-12

her time card/4240 data reflect any break time officially taken in the office.[36] CP also testified and claimed that she needed "cool-down" breaks due to the heat. Yet, she took repeated breaks while in the office and yet left the cool office to go out into the heat to talk on the phone. White said CP "did whatever she wanted to do" and left her case whenever she pleased in order to go talk on the phone or talk with co-workers or the steward.[37] In addition to taking frequent unauthorized breaks in the office, and taking her full lunch breaks, the tracking system also revealed to White that CP was frequently sitting idle in her vehicle (on May 7, 10 and 11)

On May 10, CP arrived back, again late, at 6:45. In the preceding days, White had been required to make the long drive to Jacksonville after her regular work day (due to the carrier bringing mail back late). She asked CP why she was late getting back. Mike Chestnut, the route-data manager, who was a carrier and carrier-supervisor himself, testified that the first thing he would do in a case like this of extreme slowness would be to start by having a conversation, asking the employee why it was taking so long.[38]

According to both White and Sanchez, White asked her why she was late getting back and Sanchez took exception to that question, claiming harassment. According to White, CP claimed she needed to take "frequent breaks" and that she had approved restrictions. White asked CPU for the restrictions and CP refused. Sanchez claims that she offered her restrictions to White and that it was White who refused to accept them. Sanchez did not have the approved restrictions as those were in Mr. Warden's email. Instead, she would only have had the doctor notes and her own requested restrictions. So it seems unlikely that CP offered documents that

[36] Tr. 312; GC32, pgs. 18 and 22 reflect no "O" office break times at all. Though they do show that she took her full break time out on the street "S." So, CP was taking unrequested and unrecorded breaks in the office while also taking her full lunch breaks while delivering.
[37] Tr. 309-311
[38] Tr. 593

couldn't have been useful and weren't binding. Regardless, White testified that CP claimed that she needed to take breaks any time she needed and that was the arrangement she had with Ernest Warden.[39] Sanchez tells the same story; that she told White that her restrictions allowed her to take frequent cool-down breaks as she determined necessary. That, of course, is not what the agreement was with Ernest Warden.

Sanchez also claims White told her she wasn't permitted to take any breaks if she couldn't be back by 6:00 pm. White denies that comment.[40] Again, the dispute is largely irrelevant. The CBA limits employees to 30 minutes of break time and the accommodation arrangement with Ernest Warden did not provide anything greater. Nor is there any document that indicates that White actually forbid Sanchez from taking her contractual 30-minute break time. As Mr. Chestnut explained, rural carriers aim to work quickly and leave early and make the same money. Tr. 589. White may well have meant that if CP worked quickly she could take what breaks she wanted and then still be back on time, but that if she couldn't be back on time then she couldn't take breaks as she liked.

Sanchez' claim about breaks and the time-restriction she asserts White imposed could not have mattered to her even if true. She testified that she took breaks anyway. She has claimed that she was pressured to work straight through. But there is no evidence of missed breaks. Plus, and contrary, Sanchez took her full 30 minutes the following day (May 11) and took an additional 43 minutes of idle break time.[41] If White made the statements CP either didn't take it serious (enough to feel compliance was expected) or she engaged in gross insubordination by

[39] 313-316.
[40] Tr. 314
[41] GC32 pgs. 21-22

taking her 30 minute break anyway, plus an additional 43 minutes of idle time while in her vehicle.

In terms of any allegation of hostility, retaliation or failure to accommodate by White denying established accommodations, there seem to be only a few possibilities. White forbid breaks completely if CP couldn't get back on time. That seems least likely. Given that CP was pressing for "frequent breaks" and of whatever duration she felt were needed, White may have forbidden any breaks beyond the 30 minutes allotted in the CBA. Even that attempt to limit what CP wanted to do would have set her off. That would not have been improper for White, not knowing that there was an arrangement as CP claimed. But, there was no such arrangement as CP claimed. Thus, while she may have felt it was outrageous for White to deny her the frequent breaks she wanted, she was not actually entitled to such breaks. And any denial of a non-existent right would have meant nothing in actionable terms other than that CP was angry that she wasn't getting her way. That seems most likely.

Ultimately, the alleged denial or even the actual denial of CP's (mistakenly) asserted break time accommodation is irrelevant. It was not alleged as any form of reprisal, even if CP considers it so. Her own opinion does not create a factual issue that has any bearing on the allegations that are actually made in the complaint. And her claim of the right to have unlimited breaks is erroneous, but similar to other self-serving claims.

The crux of the conversation from White's perspective was that excessively late arrival back was unacceptable and she was trying to find out why and to urge Sanchez to move more quickly and get back on time, so they wouldn't continue to miss "dispatch" requiring White to have to drive the late mail to Jacksonville. White had other concerns too, such as the burden on other employees, USPS overtime costs, service and the health and safety concerns related to

being out on the street so late and after dark in bad neighborhoods. The bottom line, however, was that CP said she would continue to take frequent breaks and would do as she pleased.[42]

White then tried to locate any restrictions. She looked in the files, tried calling Ernest Warden, called the District HR and injury comp people.[43] Lots of Postal employees have injury comp claims and White certainly knew that, including Sheryl Turner (CP's "regular") - the person for whom Sanchez filled in when she, "her regular" carrier, was frequently absent or late in her own deliveries. So White had to take the claim of a restriction seriously. And she already had initiated that inquiry. White testified that she was concerned about CP's health and that she might exacerbate any existing illness, pass out, have heat stroke or suffer some other injury and that this could also create liability for the company.[44] She wouldn't likely have ignored potentially serious illness related to the heat, nor refused an offer of an important document that she herself was already searching for. And she didn't.

White acknowledged that it was over 90 degrees at the time and that carriers spend 80% of their time outside in the elements.[45] She asked for help from HR about what to do.

Simultaneously, White could not accommodate unlimited breaks and allow a carrier to take 13, 14, 15 hours to deliver their route.[46] White had already raised concerns about the fairness to other employees of burdening them with so many extra hours assisting CP, the health reasons, overtime costs (efficiency) not to mention her having to (now habitually) make the 4-hour round trip drive to Jacksonville just because Sanchez took so much time delivering the route. CP was extremely late on consecutive days – all while taking sometimes three breaks per

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[42] Tr 315-16
[43] Tr 316-17 It seems unlikely that she would be concerned enough to ask Ballard for any restrictions May 7, but then reject them when offered three days later, and then make further inquiries to find them.
[44] Tr 318-320.
[45] Tr 319-320
[46] Tr 319

day in the office to talk on the phone.[47] Employees are not permitted to stop what they're doing to go meet with their union steward. They are required to seek permission and then schedule "union time" if it permitted and when it is operationally feasible.[48] Yet CP would stop working to go call a union rep or talk with her steward (Peacock).

Heat-Exhaustion May 11 (Debilitating Illness May 12-14)

Because of the late return the evening before, White approached CP next morning to ask her if she would be back by 6:00 pm. CP would not commit to that. They had some words, and CP, without seeking permission, went out to the parking lot to call her union rep. This was yet another unauthorized break from her office duties, and slowed her progress getting out to begin deliveries. CP's schedule requires her to be out the door beginning her route by 10:45. Yet she didn't leave the office until noon.[49] CP's delay getting out caused her delay getting back. She returned again shortly before 7:00 pm, while her schedule required her return at 5:30.

Sanchez claimed the heat caused her delay. But it wasn't hot in the air-conditioned office where she spent an hour and a half arguing and then taking substantial time calling her union. She had no accommodation that required her to spend nearly 90 minutes taking a break in the cool office. And it is that unauthorized extra break time that accounts for a lot of her delay returning later.[50] She also took her full 30 minutes of lunch time and then 43 minutes of unauthorized and unreported idle time. Aside from any heat issue, CP wasted close to three hours on personal time. She then needed three-plus hours of assistance from co-workers.[51]

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[47] Tr 310
[48] R24, Art. 17, Sec. 3.
[49] GC32, pg. 22 bottom row (Left Office "12:01")
[50] GC32, pg. 22.
[51] Id. at 12-17. "It's not the heat, it's the humidity."

USPS accepts that it was hot on May 11, and would agree with CP (and the weather service) that it may have reached 94 degrees.[52] Respondent also would not challenge that CP suffered from heat exhaustion due to the heat that day, and suffered severe, serious, and prolonged illness as a result of the heat. This is exactly the "extreme heat" that CP's physicians forbid her to work in and forbid USPS from letting her work in. This extreme heat, humidity and pollen (extreme by anyone's definition) clearly had a debilitating effect on CP. It might have killed her. Fortunately, after several days of bed-rest and missed work, CP was able to recover, just in time to go on vacation to Florida. Ms. White described her concerns for Sanchez' health as well as the performance issues that had created. She explained that it would have been dangerous to allow CP to continue working under the circumstances, and that she had to act. Tr. 316-321.

Sanchez described the extreme illness she suffered as a result of the high heat. She had migraines, chest pains, shortness of breath, dizziness, weakness, etc. All signs of serious heat exhaustion bordering on heat stroke. However, CP simultaneously points to the high heat as the reason why she needed to take "frequent cool-down breaks" but then blames White for pressuring her "not" to take breaks, thus intentionally causing her severe illness. R8.

Both claims can't be true. It can't be that she took these needed breaks in the high heat, and that she didn't take them because White forbade her to do so and as a result she got sick – because White didn't permit her to take breaks. But that's her story.

In her letter to DOL/OWCP, dated August 30, CP asserts that she took a 25-minute break on May 10 due to extreme heat and that later that day White was pressuring her against taking

[52] See USPS' request for Administrative Notice regarding the historical weather data in fn. 18. It seems unlikely that it was the 98 or 100 degrees CP claimed at other times.

breaks.[53] She said she explained to White that "not only are we entitled to a lunch break and cool down breaks according to USPS, and OSHA, and our contracts, but I had accommodations and restrictions as well." Referring to May 11, she explained "I later called her to let her know I had to take additional breaks to cool down no answer." She testified in the same fashion about the discussion May 10 about her late return and White asking her about it, as well as the heat on May 11 and her efforts to notify White of the need for multiple breaks that day because of the heat. She clearly stated, repeatedly, that she took frequent cool down breaks, as well as those she characterized as entitled lunch breaks.

CP Refuses to Provide Adequate Medical Information, Health Assurances

USPS, CP's Union, and DOL sought evidence from CP about her medical condition and an updated medical from her doctor that would allow her to work and allow USPS to determine if it could accommodate her health and restrictions. About the repeated requests and CP's repeated opposition there is no doubt since it is well documented.

CP alleges two things here that are largely irrelevant and do not aid in resolving the issue of retaliation. CP claims she offered her medical restrictions to White and White refused. White claims she asked for the restrictions and CP would not provide them. It is conceivable the truth lies somewhere between those two poles – in terms of whether CP tried or White refused. But resolution of this temporary controversy is not material. The second herring is the claim that the prior restrictions were clear, that nothing changed and that USPS spontaneously stopped complying with them. All of that is mere argument that is easily resolved by simply reading the doctor notes and observing that Sanchez was once again overcome by the extreme heat. There

[53] R23, pg. 2 (middle paragraph)

were many developments after April 12, the easiest of which to understand is that CP became seriously ill again on May 11 due to the heat. That by itself was a game changer.

On May 7, after speaking with CP about her slowness and Sanchez' claim of breaks as an accommodation, White contacted HR to ask for information about restrictions because she couldn't locate any. R26. In two later grievance responses, White stated that as of May 15, Sanchez had refused to provide medical documentation. GC10. But White agreed, concerning a June 11 claim that by then Sanchez had submitted medical documentation that disqualified her from employment. GC16. So it appears from White that CP initially refused, but then submitted a doctor note sometime later, before June 11. Sanchez submitted a medical note dated May 23. R25.[54] That note says CP cannot work in the heat or in extremes in temperature. The parties then discussed that the note did not settle the concern about possible restrictions. CP and others had a group phone call on June 12 to address CP's concerns and to attempt to get better, more specific and useful information from Sanchez. Tr. 376-77.

Because the new note did not permit CP to work at all in the heat (not even mentioning breaks as a possible solution) it served merely to confirm for USPS that CP could not be permitted to work in clear terms by her doctor. CP insisted that she could work and that the note proved it. She claimed that there was no definition of extreme heat, that there was no mention of any particular temperature and that to the extent that there was heat she, CP could decide when to work and how many and how long her breaks should be ("as needed"). Tr. 191, 204-05.

Sanchez left work complaining of the heat May 11 and hadn't returned. Though she had called to notify USPS of her serious illness caused by the heat. R18. She was away the following

[54] It is curious GC didn't offer this note given its import.

week on vacation. Her first day back would have been May 21, but she was taken off the schedule. On May 23 her new, disqualifying medical note followed, two days later.

CP's protests that she had provided everything USPS might need and that her restrictions had been accepted before were nullified by the May 23 note. Any dispute about the continuing validity of the March 23 notes or the April 11 accommodation were overtaken by CP's heat-related performance issues, her new demands for frequent breaks, the increasing heat (well above 90 degrees) and her heat-related collapse May 11-14. That CP believed that nothing had changed and that she was entitled to work on her own terms could not erase the doctor's prohibition in April from working in extreme heat at all, nor the doctor's prohibition in May against working in "the heat." CP disagreed with her doctors. She said so. She said they disagreed with each other. Tr. 191. She claimed she should be the one to decide on her limitations. The doctors' multiple and consistent orders prohibiting CP from working in the heat were binding upon USPS. The disputes about who asked and what was said are not material. The notes are controlling and were definitive.

The May 23 note made no mention of any breaks. It was a blanket prohibition from working in extreme temperatures. It did not define "heat" or "extreme temperatures." As a result, it was even less clear than the restrictions from March 23, which at least defined extreme heat as 10 degrees above average. But Sanchez argued that the March 23 note defining extreme heat was improper because she claimed that emergency room doctor (Moody) was not her workers compensation physician and her WC doctor (Hosein) didn't agree with the definition. Tr 191. Sanchez argued that her original (unspecified) restrictions from 2017 were better and the ones from Moody were to be disregarded in favor of those she preferred that allowed her to determine what her needs were. She felt the May 23 note did that since it did not provide a specific

temperature in which she could not work. Without defining heat or extreme heat it was Sanchez claim that there was no limitation at all, and that the only restrictions she had that were mandatory for USPS were that she be permitted to take unrestricted breaks "as needed" which she would decide. She testified so as well. "Extreme heat doesn't mean anything and it's up to you to know how you feel." Tr. 205. She said "It's just according to how I feel." Tr. 192.

That did not end the inquiry. Rather, it started the process. Now, from USPS' perspective, CP was clearly forbidden to work. The question for USPS was under what circumstances and terms (accommodations) she might be able to return. New medical information was needed, or at least clarifying information that would permit exploration of accommodations, rather than the blanket prohibition. USPS asked for such clarification, repeatedly and in documents.

Sanchez vacillated between expressed, but grudging compliance and outright defiance. In some instances she said she would provide an updated medical. "I sent my work note from May 23, 2018, it is the last updated one I have. Was there something else you needed? (Email to Nurse Kucharsky, dated July 3) R13, pg. 3. But, "The doctor said that was all he could put legally. Let us know if we can get that other form filled out again if so email it they ask for two days." Id. On July 5, Kucharsky reminded CP about the need for medical clarification that CP previously said she'd provide. Id, pg. 2. CP never responded to her about the request. CP's limited expression of willingness was not followed by actual cooperation, at least not for a long time, despite that was necessary for CP to get back to work.

In other instances CP flatly refused to provide more or new information, insisting that it was wrong or unnecessary because she had provided sufficient doctor notes already. R11, R23.

On July 25, DOL granted CP's OWCP claim. GC13. That did not change CP's medical status. But it did make it possible for CP to qualify for limited duty. But limited duty depended on there being workable restrictions. And that determination required new medical information with restrictions that USPS could accommodate. As it stood from May 23 onward, CP's doctors prohibited her from working in her craft since the essential elements of her job were working in extreme heat and extreme weather generally. R17, pg. 3. If Sanchez was to return, she had to overcome the prohibitions of her own doctors. That much should have been obvious.[55]

CP resisted providing new medical information about her condition.

On August 30, CP wrote to DOL (R23): "This is to explain why I have not filled out any CA7's from May 21, 2018 until today." Sanchez then explained numerous reasons why she refused to cooperate in the effort to obtain new medical information about her condition. She "refused" to provide a medical release to USPS. She felt that her removal from the schedule was not based on medical considerations and "should not be filed on work comp as I was told to do by [the union]." She claimed [falsely] that she had been working 40 plus hours. She also said that her union said they thought she should pursue compensation through workers comp " . . so yes, I agree with [them] that I need to be paid, I just do not believe it should be through work comp for that time period. I believe USPS should have to pay me for every day and hour that anyone worked while I was out . ." (pg. 2) "I have estimated that I am owed by the post Office

[55] Sanchez claimed no connection between workers compensation and USPS' removal action. She believed one had nothing to do with the other. In her myopic and self-serving assessment the company should pay for its crimes and DOL shouldn't let USPS off the hook. She's also not a labor lawyer versed in the nuances of labor law. General Counsel took the same tack, arguing strenuously and at every turn that OWCP had nothing to do with Sec. 8(3) retaliation. After all, GC said, how does paying for CP's absence have any bearing on the retaliation claim? All that is posturing, proven by GC 19, CP's OWCP accepted claim. Somehow, that DOL agreed in some fashion with CP's situation was useful to the argument, but nothing more.

not Work Comp for the time Veronica White had me off schedule at least 9 hours a day for 6-7 days a week . .” She explained that USPS owes her the money due to retaliation and from White “refusing her breaks in 90-100 degree weather.” Id. Pointedly, Sanchez described her financial plight and her work comp case and said: “the union and usps decided they would try to get me to file this time on work comp so that they did not have to do their job as the union. I will not do so as i[t] was not due to work comp it was retaliation. Once I receive a letter stating I can no longer be accommodated then and only then will I file from that day forward on work comp, but as far as the time from May 21, 2018 to now I believe it is not work comp it is retaliation and should be handled as so through the grievance process and EEOC. I deserve to be compensated for this time and will expect or accept nothing less. . . By the USPS and the Union telling me to file this time on work comp I would be falsifying documentation and would have no medical documentation to back it up, **also I would be cheated out of money and wages I deserve due to the percentages that work comp pays verses the actual hours and days I was cheated out of by Veronica White allowing other RCAs from other offices and those who come after me on matrix to work and not me.** . .” Id. pg. 3, emphasis added.

The May 23 Dr. note confirmed what USPS already knew: that CP could not work in the heat, and if she wanted to do so still, new medical restrictions were necessary. USPS repeatedly asked for new restrictions, in an effort to seek accommodations that would get CP back to work. CP, on the other hand, repeatedly resisted. She claimed several reasons, including that the March 23 restrictions were still binding; the May 23 restrictions were sufficient; as well as that she didn’t need to cooperate outside of the grievance process.

What CP didn't accept was that her performance issues demonstrated that her unauthorized frequent breaks violated the agreed restrictions and showed the arrangement wasn't workable; that her continuing excessive delays caused the need for a new arrangement more compatible with her job description and work duties; that the increasing, and clearly "extreme heat" made the earlier arrangement obsolete; and, most significantly, that CP's latest heat exhaustion dramatically proved the need for a new set of restrictions that was both safe for her and acceptable to USPS for its operations. Compounding the difficulty, CP insisted that her May 23 Dr. note was all she needed. She didn't accept that when the doctor forbid her from working in extreme heat, that it meant something. She claimed it didn't mean anything. So she resisted providing anything further.

USPS, and CP's union repeatedly tried to obtain an updated medical from her so that USPS could determine if appropriate accommodations were feasible so we could put her back to work. Sanchez insisted throughout that the medical information USPS already had was sufficient. Her steadfast belief was that if the information was good enough for her accommodations in April then nothing more was needed. She refused to acknowledge that the weather had changed, that she had once again been stricken with heat exhaustion, and that her weather-related slowness created a question about her health and her performance. She claimed merely that the work was excessive and the route was improperly drawn for discriminatory purposes, that her own work was fine, that she alone would determine when she could work and when and how much break time she needed. As a result of her steadfast beliefs she refused to cooperate with anyone. She alone knew what was right and others could not force her hand.

On July 3, CP emailed the nurse (Kucharsky) that she had sent her work note from May 23 and that it was the last updated one she had. The May 23 doctor note recounts CP's medical issues and her situation generally. It then provides a brief description of what might be considered proposed limitations. It sates: "With current medication she is better but not at baseline. She does need to follow work restrictions to avoid heat, extremes in temperature and humidity, avoid any triggers – bleach, cleaning chemicals, perfumes, air fresheners. If there are any questions please contact my office."

The doctor's prohibition against working in "heat" and "extremes in temperature and humidity" was immediately disqualifying. All carriers in Georgia, especially in May, are required to work in "heat" and "extremes in temperature and humidity." That is expressly stated in their job description. While CP may have felt the May 23 doctor note was sufficient to put her back to work, simply because it was a note from her doctor, she failed to accept that the note itself and the prohibition against working in "heat" rendered her medically incapable of working. So she was adamant that what she had done was enough, and that she would do nothing more. She could judge what extreme heat was.

The impasse in not having acceptable and workable – and safe – restrictions before May 21 triggered her removal from the schedule temporarily. The later impasse delayed her return.[56]

That CP wanted to continue working in the extreme heat, despite the prohibition from her doctors and her recent heal illness did not mean USPS could accommodate that. USPS could not ignore doctor orders or otherwise allow CP's self-help. So she was removed from the schedule while USPS tried to determine what to do safely. Sanchez' May 23 note did not change things

[56] CP's refusal was motivated by ideology and money. R23

but made it more impossible for USPS to let her work. OWCP then granted her claim and from there, the medical issues were taken over largely by OWCP and its procedures.

Sanchez and her doctors provided little information and nothing that would allow her to work in 2018. CP herself resisted providing medical information, and said so explicitly that she refused to do so. It was only in 2019 that her physicians provided medical assessments that allowed her to return to work safely and consistent with her work duties.

Ultimately, the restrictions were reduced to where there were no differences at all from what she was entitled to under the CBA, plus her work day was limited to 8 hours. CP testified that she had improved due to better medication allowing her restrictions to be reduced.

Objectively Poor Performance: Work Standards Were Finely Tuned, Reasonable and Mandatory

The union contract contains express provisions that define many of the rules and rights in this case. Route adjustments/evaluations as a right with employee participation and the 30-minute lunch period are clearly defined. R24, Art. 30, Secs. E, F, J, pgs.111-112. The CBA defines just cause for discipline as including the failure to maintain the regular schedule within reasonable limits, the failure to perform satisfactorily, and delay of the mail. R30, pg. 125; Tr. 384; 595.[57]

Mike Chestnut addressed the allegation that CP could not meet the evaluated delivery schedule because it was not evaluated properly. He discussed in detail the care, effort and extensive data that is entered into the system to provide an objective and reliable way to determine what time a route requires for delivery and how that data is crucial for Postal operations and budge as well as tied directly to carrier pay. Tr. 543-47; 548-49; 551-52. He

[57] Mr. Chestnut said employees have been terminated for such unsatisfactory performance. Tr. 596.

described that the process requires driving with a carrier or even the union, covering every mile, every mailbox, and documenting every turn in the road to count the miles, the delivery points, the mail volume, walking distances, etc., all in an effort to determine a precise and objective standard used to determine expectations and compensation, all with input and oversight by the carriers. Tr. 554-570. He also described his personal efforts to assure that the evaluated times in Ludowici were done correctly and that he drove every mile of every route himself and also described efforts to address carrier concerns by driving with the union and adjusting the routes to make sure they were proper. Tr. 571-587. He testified that Ms. White had no role in the data collection or decision-making process. Tr. 583. The process he described does not permit judgment or variance and is formulaic. Tr. 554. He described the route evaluation for Route 5 as objectively reliable as he had counted every mile and mailbox himself. See R33. The Route 5 adjustments he himself participated in and directed so that it was "100%" accurate. Tr. 557-579. See R34 (evaluation details and data collection that the regular carrier, Sheryl Turner" "refused to sign.") The Route 5 evaluated time and schedule was accurate and reliable. It's also mandatory.

Other carriers, except Turner (who also had an injury comp case), met the evaluated time. GC32, pg. 22; R22. Sanchez herself met the evaluated schedule on April 12-13 (upon her return from illness). In fact, she completed it early. R22, pg. 2 (finishing under 8.8 hours).

As soon as Ms. White began working and for six consecutive shifts, she needed between 11 and 15 hours to complete her deliveries (with assistance). GC32, memo pg. 12. CP asserts that she was not slow and did not take excessive breaks, but that the route itself was improperly designed, and in fact evaluated with an intent to discriminate and force carriers to quit. R8. There is no evidence that Route 5 could not be completed timely, and CP herself did so initially.

CP's performance over the six days in late April and early May triggered consideration of both discipline and health concerns. See GC 32. Tr. 275, 277, 282, 294-99, 306-312, 315-16. White believed that CP had ignored her request for an interview and considered disciplinary action for both matters. The disciplinary consideration was never acted upon. No action was taken, and CP was not informed of the effort other than having been requested to attend an interview. She didn't show up and the matter was dropped after she could no longer work due to her health issues. While CP suspects that her removal was related to grievance filing and threats to file charges, there is no evidence of that. CP claims that the removal was tied to the pending discipline. But there is no evidence to support that claim either, and poor performance and insubordination are legitimate and non-discriminatory bases for discipline in any event. Though disciplinary action was not taken.

The Evidence about CP's medical restrictions (and USPS' obligations) in undeniable. Hostility plays no role in undisputed medical documentation/express restrictions. CP's documented falsehoods cast doubt on her claims and suggest money is her main object.[58]

Requests for Acceptable Medical Restriction Data – May 2018 thru August 2019

Prior to and after CP's OWCP case was accepted on July 25 the effort to obtain medical orders that would permit suitable accommodations took until August 2019 and after, after which CP finally presented requested accommodations USPS could permit within her job description. The process was slowed by CP's reluctance (and at times outright refusal) to assist DOL as she

[58] It is worth recalling that when White arrived she was confronted with a hostile workplace where employees did as they pleased. She tried to correct the situation and restore order and the employees resented that. Tr. 259-63.

felt it was wrong to do so and unnecessary. The effort began in July 2018. In August, she informed DOL that she refused to supply medical data because her claims should be handled as grievances, in which she would receive more pay than through OWCP reduced payments. Her doctors provided medical evidence, albeit slowly, but they consistently prohibited her from working in the heat, thus continuing to disqualify her from returning to work. Eventually, her doctor released her from a heat restriction and required only that she be allowed the same 30-minute breaks she was already allowed in the CBA, and her daily work was limited to 8 hours.

The pertinent documentation is listed here chronologically but the most significant physician note was provided August 23, 2019.

2018

May 25 – CP provides medical (dated May 23) that forbids her from working the heat. R25

June 12 – In group conference, CP agrees to seek additional medical data. See R26, pg. 14

July 3-5 – Nurse Kucharsky and CP discuss need for medical data to supplement May 23 Medical, CP explains "that's all doctor said he could put legally." R26, 12-13.

July 5 – Kucharsky reminds CP of her prior agreement to provide medical data to address accommodations during conference June 12 ("that day"). R26, pgs. 12-13.

July 10 – USPS HR describes correspondence with CP and need for more data. R26, pg. 7

July 25 – OWCP accepts CP's claim and requests medical data to support processing. GC19

July 30 – USPS HR again discusses need for new data from CP for DOL claim. R26, pg. 8

August 30 – CP advises OWCP she refuses to provide new medical data. R23.

September – Ballard emails CP for medical data. R26, pg. 9

October – Ballard reminds CP of need for medical data. Id. at 10.

November – Ballard notes call to CP for medical data. Id. at 11.

December 3 – CP answers Kucharsky (July 5) request for data, but provides none. Id. at 12.

December 31 – Ballard reminds CP of need for medical data, CP states she does not want to file as OWCP claim and prefers payment from USPS. Id. 18.

Dates in 2019

January 3 – Ballard asks DOL to assist in seeking updated medical data from CP. She notes that changed season requires current information. R29.

January 14 – Dr. Hosein issues restrictions: a mask and frequent breaks. R30, pg. 50. Dr. Hosein notes separately that CP's symptoms are worse in the heat and humidity. The implication is that even absent heat and high humidity CP still requires "frequent breaks" thus also rendering her unqualified even in the cooler months.

January 22 – Sanchez asks Ballard for update on OWCP payment ("COP"). Id. at 19

January 29 – Ballard describes non-cooperation in 2017 OWCP claim limiting benefits. Id, at 20.

February 6 – Ballard reminds CP about process to file data properly and seeks discussion with CP about her claims. Id. at 21-22.

March 5 - April 23 – HR officials discuss desire to accommodate, noting that new medical requiring frequent breaks, extreme heat and need for further clarification. Id. at 23-24.

May 21 – **Dr. Suddith issues medical limitations** "no exposure to heat, humidity, toxic fumes, smoke, or volatile chemicals. R17, pgs. 9-13 (printed 7/8/19)[59]

June 6 – Ballard asks OWCP for "second opinion" to seek review for possible accommodation due to current disqualification from existing medical. R30.[60]

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[59] It is disturbing that GC sought to prevent disclosure of so many of these medical records about CP's condition given their importance to any search for the truth about the facts of the case. That CP's health and medical status was somehow not relevant is patently absurd.

[60] USPS repeatedly attempted to force the issue of getting revised medical opinions to obtain reduced restrictions in order to find accommodations that would allow CP's return. If USPS was determined not to employ CP, it would not have made so much effort to bring her back. USPS could simply have allowed

June 27 – OWCP asks Dr. Suddith for medical data, providing forms and questions.

Includes Statement from Claims Examiner, stating essential functions of RCA (temp extremes, high humidity, exposure, fumes/dust, etc.) Id. at 1-6.

July 8 – **Dr. Suddith** answers OWCP Inquiry, **lists restrictions** "no exposure to heat, humidity, toxic fumes or volatile chemicals." Id. at 7-8.

July 30 – Ballard asks CP for updated medical data. R28.

August 23 – Ballard responds to EEO specialist inquiry.

She explains that CP cannot be accommodated because latest medical prohibits exposure to heat/humidity, etc. and that is impossible to accommodate due to nature of RCA position working outside. She says CP was sent out on a second opinion appointment Aug. 15 and they are waiting to see if the new doctor finds CP may be able to return to her job. R26, pg. 28-29.

August 23 – **Dr. Suddith issues Return to Work**, requiring CP get <u>30 minute break per day</u>.

Sanchez brings note to facility, forwarded to LR/HR. R26, pgs. 30-31.

September 10 – Ballard contacts OWCP and seeks clarification of the second opinion.

She explains that the reference to frequent breaks and limiting exposure to extreme heat both need clarification in terms of the amount and frequency of breaks and the duration of exposure.

September 30 – Ballard memo noting CP's second opinion and issue of frequent breaks and duration of exposure to extreme temperature are continuing issues needing clarification and noting possible limit to 8 hour work day. Ballard (previously) sent request to DOL claims examiner seeking clarification. R26, pg. 33.

CP to remain sidelined due to her doctor's orders. It was CP's intransigence that delayed her return and USPS' extra efforts that brought her back. And for that effort, USPS had a Complaint issued.

September 29 – **Dr. Morales second opinion clarification**:

> CP is permitted to work an 8 hour shift with (3) 10-minute breaks. R32, pg. 2
>
> Included in DOL letter dated November 7. Included DOL's letter is a "Clarification" noting CP's 8 hour work and 30 minute break. R32, pg. 54(b)

CP's Erroneous Claims of Harassment and Persecution Undermine Her Credibility

In her May 8 letter CP claimed a hostile work environment at Ludowici. R8, paragraph 1. One of her allegations was that Ernest Warden caused her physical, emotional and psychological harm by working her 11-12 hours per day but only paying her the evaluated time of 8.8 hours, and that it was only if she went over 40 hours in a week that the Postmaster would agree to pay her for all her time. He even would try to keep her under 40 hours in order to not pay her for her work and call others, instead of her, to keep her hours under 40. That is precisely how the contract pay system for rural carriers is supposed to function. They get paid a fixed amount for the task and are paid the evaluated rate for that particular route. Regular (career) rural carriers get no additional compensation unless they exceed 56 hours in a week. Whereas the non-career rural carrier associates, receive compensation for their full hours only when they reach 40 hours. It is not psychologically abusive to apply the contractual wage system that the union negotiated on the employee's behalf. But CP claims outrage merely because she doesn't like or doesn't know how the system is supposed to work. See Chestnut testimony. Tr. 589-90.

In May, Sanchez wanted to pursue a pay grievance that preceded Ms. White's arrival. White agreed to help her get her pay. Yet when Ms. White called Sanchez on the weekend to help with the grievance and ask about getting the paperwork from CP, Sanchez claimed Ms. White's help was "harassment." R8, paragraph 2.

Sanchez also claimed that Warden "discriminated against me by rushing me and violating my safety with an overburdened route which was made that way on purpose to force my regular to quit, so that he could give it to Harley . ." Id. at third paragraph. Sanchez appears to believe, or at least she claimed, that Warden controlled the route evaluation himself, that he designed it to be overburdened in order to force employees to quit, and that by asking CP to finish the route on-time, he was "discriminating" against her and attempting to compromise her safety. She doesn't seem to understand that if she works diligently, she can finish the route earlier and make the same money in less time. This letter was written in early May shortly after CP had returned April 12 from her heat illness in March. As of April 12 and 13, CP had been able to complete her route in less than the evaluated time (less than 8.8 hours), yet she appears to claim a right to take 11-12 hours, and that if her boss asks her to hurry up, that it is a form of harassment and an attempt to harm her health and safety and make her (or others) quit.

When Postmaster Warden called her on her phone during deliveries and told her to "put the pedal to the metal and get back to the office" she considers this "harassment." Id. at pg. 2, first full paragraph. It seems Warden too had difficulty getting CP to meet her evaluated time and schedule. She considered his efforts to have her comply with her contractual and work obligations to be "harassment" designed to make her quit or make her unsafe.

She complained further about Warden speaking to the carriers disrespectfully making them cry and then go out on the street full of anxiety, harming their safety. Id. pg. 2, 4th paragraph. She considers that abusive. She explained that Warden often makes her union rep (Tina Peacock) cry because he is either following her on her route too often or giving everyone else help except her, or calling her to tell her to hurry up. Routine instructions to finish up and return to the office (to make the dispatch time), CP considers abusive harassment – by Warden.

Next, CP claimed that Warden did not pay her correctly "yet the Postal Services allowed him to retire." She claimed that he left them "so emotionally damaged that we cannot perform our jobs correctly or in a timely manner." She explained further that Warden had the authority to evaluate the routes properly, "yet they would rather put our lives in danger and psychologically and emotionally abuse us." Id. pg. 2, last paragraph.

Sanchez further claimed that Warden falsified documents throughout the mail count and that he discriminated against her as a female by intimidating and belittling her so she'd change routes. She claimed further that he tried to give Harley more hours by keeping her (CP) out of work due to her medical restrictions but Warden's plan backfired because she was able to come back to work. Id. at pg. 3, first paragraph.

Sanchez then went after Ms. White. "The new OIC has violated my disability rights already and she has not been here long. She rushes me and tells me to pick up the pace and get back after I told her on Monday May 7, 2018 that I must take frequent breaks and I only had one ten-minute break and it was 90 degrees out that day. [Truth be told, CP spent well over an hour of extra time in the office that day, claimed 20 minutes for lunch, and had at least an additional 13 minutes of unauthorized idle time that day according to her GC32.] She recalled that White told her that upper management and district were calling her, telling her that the carriers must be back by 6:00 and it was 4:00 or a little after. CP and Faye tried telling White that there were still parcels and other work and White said to "give her one hour and 30-minutes worth that we had to get back no matter what." Id. pg. 3 middle paragraph. She considers White's attempt to get her to return on time to be harassment and a violation of her disability rights.

Later in the letter she says "I am entitled to a 15-minute break and a 30-minute lunch break and we are lucky if we get a five-minute bathroom break, yet we are ordered to put down a break whether we get one or not." Id. pg. 3, 5th paragraph.

Sanchez explained the original doctor notes from March 26 and her eventual return to work. She then described the developments once Ms. White came to work. She said: "I worked from April 12, 2018 until May 11, 2018 when I got overheated because I was afraid to take breaks due to Ms. Veronica White harassing me again that morning about why it took so long the night before? I tried to explain to her that I took 25 min break all day to cool down when needed and today was going to be three to four degrees hotter so I may take longer today just a heads up and She said to me if you cannot make it back here by six you are not to take a break. I tried to explain to her that I had an accommodation with Ernest Warden and that if I took more than 30 min break it would not be counted against me, but she did not want to hear it. She said you do not have restrictions or accommodations from what I hear your work comp case was denied. She is constantly harassing us before we even leave the building in the Am saying I need you back by 530 what time do you think u will get back. I would tell her I really don't know maybe 6:30-7, but I would be back once I delivered the mail as safely and effectively as I can." What is most significant about this note is that CP claims she became ill May 11 "because I was afraid to take breaks due to Mrs. Veronica White harassing me again that morning." R9, pg, 3.

Sanchez doesn't tell a consistent story. In one document she claims she had a right to and in fact took frequent breaks, including on May 11. Here, she claims she did not take breaks due to White's harassment. The timecard documents show she actually took many breaks that day, including breaks in the office in the morning, a 30 minute lunch, and 43 minutes of idle time.

Sanchez tells different audiences different things depending on her goals. She's not credible.

Sanchez Refused to Provide Medical Information as a Tactic – To Make More Money

She also told Ms. Deberow "I will ask my doctor if there is a set temperature that I cannot work in and let you know." Sanchez did not do so until 2019. Her union told her they would seek pay for her. R10. She then explicitly refused to cooperate with USPS or DOL, telling DOL instead that a grievance would win her the money she was owed or she would pursue some other option. See GC23. Well over a year passed without her providing the documentation that was necessary to explore options to put her back to work.

At critical stages shortly after she was taken off the schedule CP refused to provide information to assist in her return. See R11 texts. She was advised that "According to them, the hold up in your return to work is updated medical documentation that you need to provide." Pg.1 (July 3). Nathan advised her again the same day: "I wanna help you but the way you need to do that is to contact your union representative. If updated medical is required more recent or more detailed than what you have provided, they will be able to find that out for you." Pg. 2. Sanchez responded that she wasn't taken off the schedule for medical and that only came up after she called OSHA and EEOC. Pg. 3. Nathan responded: "OK. But now that that is in the mix, you need to call your union representative. Sanchez said: "I will but I still have to be sure Veronica is held responsible for sending me home for no reason." Nathan: Anything of that nature is done through the grievance process. Period. Sanchez concluded: "OK Mr. Nathan thank you very much for your time I'm not wasting anymore of my time on the grievances because it don't work. I'll will take another route." Pg. 3. Nathan tried to convince Sanchez to stick with the grievance process and let it move forward. Pg. 4. Sanchez responded: "I have a grievance from

December that has not been resolved and five from Veronica. Going to my next step have a good day Thank you" Pg. 4[61] Sanchez will not be told what she can or can't do, by anyone.[62]

The Realities of the Case

General Counsel argued that DOL only deals with compensation, not putting employees back to work. That, of course is a gross mischaracterization of what DOL does. And while CP may not know that, GC certainly does, and the arguments advanced to bar evidence of the efforts by DOL to find CP suitable accommodations could not have been made in good faith. GC knows that DOL does more than pay benefits. The judge does too. One of the main functions of OWCP, and the thing that actually got CP back to work, was its intervention and mediation between CP, her doctors, and USPS' accommodations decision-makers. OWCP provided the tie-breaker, the neutral that broke the impasse and finally coaxed CP and her doctors to offer and accept limitations that were within USPS' acceptable range of the job description. Up to 2019, CP's doctors were standing firm that she could not work in the heat. They moved off of that slowly, eventually agreeing to unspecified frequent breaks. That was unacceptable, given CP's history of abusing such ambiguous parameters. Eventually, OWCP turned the switch and agreed to a limited break time of 30 minutes, taken in parts. It took their action to force movement by

[61] Nathan and CP also discussed a general meeting that was being held for current employees in a working status. CP demanded to attend and Nathan explained that she was not eligible to attend. She advised Nathan that despite telling her she wasn't eligible to attend: "Let Kathy and Robin know I will be there". When Nathan continued to let her know she could not go, she threatened him that she would contact "higher up" and "If y'all are discussing hostile work I need to hear it I'm calling EEOC and upper management right now". Pg. 5 (July 9).

[62] This includes the judge in this case. The Judge constantly admonished CP to refrain from talking over counsel, from interrupting, from continually adding her own narrative and arguments even when there was no question pending. She interrupted the judge repeatedly, talked over him, and refused to control herself in the manner he directed. She repeatedly didn't answer counsel questions and was evasive throughout if the question posed did not correspond to her own narrative.

CP that would allow CP back to work. OWCP did what USPS could not. It forced an agreement. The agreement allowed CP to go to work. OWCP doesn't merely write checks. But that activism doesn't fit GC's or CP's narrative, because it then opens the door to the reality that CP wasn't cooperating with DOL either, the way she wasn't cooperating with USPS. That uncomfortable fact wasn't useful to GC's theory and was instead quite detrimental. Thus the desperation to keep information about OWCP out, except for the useful part. This tactic by CP undermines her case, it does more than that for GC's good faith. GC knows or should know that had CP cooperated sooner, she may well have gotten back to work sooner. This is not a leading or speculative question, it is fact. CP refused to act in her own best interests to give OWCP what they needed. GC ignored her malingering and sabotage, determined to win at all costs regardless of the specious claims that would require. But the court knows full well that CP's return to work after traumatic injury and repeated illness depends on her cooperation with the system, even if it didn't fit her ideology. She was required to cooperate, not merely for benefits, but for any possibility of recovering her job. She could not merely hold her breath. Eventually, CP agreed to restrictions that are not restrictions at all. She agreed to accept merely what the CBA already provided, 30-minute lunches. So maybe OWCP didn't do that much in getting her to essentially drop her claims. Nonetheless she's back to work. If she agreed to surrender simply because she ran out of money and fighting on principle or for more cash (unreduced earnings) was no longer feasible, so be it. It seems her health had improved with new meds. But, the delay in getting to the finish line, other than CP's possible health improving, was her belligerence. When that was overcome, she returned to work. USPS didn't change in all of this. It's obligation to only let CP work if it was safe was carried forward consistently and without rancor or discrimination.

Again, had CP cooperated sooner, she would have achieved her aims far more quickly. Either one of two outcomes are possible. Either CP's health did not permit her to return sooner (in which case CP's removal was fully justified), or CP's health didn't need improvement and her hard stand on requiring frequent breaks and her doctor's orders were exaggerated. There too USPS cannot be faulted for relying on doctor's orders even if they that were unjustified. What seems to be possible is that CP didn't want to participate in medical discovery because she was afraid of the revelation. Either she was not so sick and her doctors didn't want to exaggerate too much or she was so sick that they couldn't fully tell the truth without disqualifying her completely. What USPS cannot be faulted for is relying of the professionalism of the doctors. They said she couldn't work in the heat. To the extent that created ambiguity, only the doctors could fix that and either CP wouldn't let them, or they couldn't do so medically. She said they couldn't offer more "legally" whatever that means. It suggests there is more to say, that is better left unsaid. That does not inspire confidence in her or them. But we never heard from them, only her. The consequence of the ambiguity of their limitations must be laid at her feet. USPS could not possibly have ignored the doctor's clear instruction not to let her work in the heat. To have done otherwise may have simply substituted the lawyers at the NLRB with those from OSHA and a wrongful death law firm. USPS was between the proverbial rock and a hard place. What CP wanted was dangerous for her and would have created enormous liability for us. Yet doing the right thing for her didn't sit well with Region 10, who wanted to champion her professed rights, no matter the circumstance. The choice we made was to honor the doctor's orders while seeking new orders that would allow us to allow her back to work. If only she had either cooperated or recovered more quickly, we might not be here. Had we acquiesced, she might not be here.

Legal Argument

There are several reasons why GC cannot make out a prima facie case. While protected activity and knowledge are a given, there has been no expression of animus toward Sanchez for that activity. Statements of futility, standing alone, are insufficient to show hostility. At most they may indicate indifference if taken literally. They do not express anger and certainly not retaliation. More is needed to make such an inferential leap. *Tschiggfrie Properties,* 368 NLRB No. 120 (2019). Here, there was no disciplinary action at all. Instead, USPS was following CP's doctor's orders from March, and then again in May 2018. Doing so in light of the clear risk to CP's health and the prohibition by her doctors from allowing her to work cannot be considered an adverse action.

Moreover, there is no evidence of hostile motive. And the inference asserted from the claim of futility does not provide that missing link. It is too attenuated and too minimal an assertion to support the weight of an inference that retaliatory hostility was the basis, or even a basis for action. Nor does timing supply an inference of suspicion. Time was of the essence in order to address CP's serious health concerns. That medical necessity supplies the only reasonable basis for the prompt action. Even concerns about potential discipline based on clear performance problems provides a far more sound and likely basis for action, than the mere whiff of suspicion of hostile intent.

In the final analysis, even if hostile motive can be spun out of the gossamer of claims about the futility of grievances, it should be beyond question that Respondent would have acted the same way without regard to PCA. First it was compelled to do so by medical necessity. It was mandated by liability derived from violating doctors' orders and continuing to allow CP to work in the heat, just after having suffered heat exhaustion and debilitating illness. Breaks were

not the answer. Respondent could not simply have given CP a water bottle and let her take whatever breaks she liked. She was already doing that, and yet she still nearly collapsed again in the heat. She then spent days suffering from the heat exposure. Respondent could not ignore her health or the doctor's orders or its own liability.

CP may believe that USPS is callous about her. But if that is so, then it certainly would have cut her loose in order to avoid tremendous financial liability that would certainly have come from continuing to work her in the hot sun contrary to express doctor prohibitions. Self-interest alone dictated that we act and act fast. But our own rules (R1), all the doctors, and even CP's own health mandated that we take the action we did. So even if hostility might have played a role, it would not have mattered.

Some proof at least is in CP's own history. Twice in other circumstances we prevented her from working, due to health concerns, both in situations where PCA was not a factor. Once when she was first ill in March 2018 and then (a third time) in 2020 when she was injured by a falling tile. Clearly, USPS protects itself from liability at least. We'd be no more likely to jettison that self-interest and keep an activist working just because they engaged in PCA. No, USPS had to act, would have acted, and did act because of necessity. As a result, under both *Wright Line* and *Tschiggfrie* we could not have violated the Act because we would have taken the same actions in the absence of protected activity.

Sanchez' allegations that Ms. White repeatedly told her that grievances were futile is not credible. CP has exaggerated and engaged in outright fabrications repeatedly. So too have Peacock and Steiner. Both Peacock and Steiner stated in their affidavits that White said rude things and that she often would not take and sign grievances when she was busy. Both acknowledged they made no such claims about futility in their affidavits even after coaching by

counsel. They also said in their affidavits that such things weren't said and again after coaching agreed that the issues were thoroughly discussed and in detail. It seems incredible that they just forgot after several swings at providing their story. None of the claims are credible. Ms. White's denial should be credited. The claims of futility should be rejected as unfounded.

For all these reasons, Respondent respectfully requests that the allegations of violations of Section 8(a)(1) and (3) in the complaint be dismissed.

DATED this 28th day of August, 2020.

Respectfully submitted,

Mark F. Wilson

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Mark F. Wilson, Esq.
Law Department – NLRB Unit
United States Postal Service
1300 Evans Avenue, Rm. 217
San Francisco, CA 94188
(415) 550-5443
(415) 550-5416 (fax)
Mark.F.Wilson@usps.gov

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing post-hearing brief were sent this 28th day of August, 2020, as follows:

Laura Evins
Kurt Brandner
233 Peachtree St. NE
Atlanta, GA 30303

Via E-Filing

Connie Sanchez
cocowood79@yahoo.com

Via Email

Mark F. Wilson

Mark F. Wilson, Esq.
Law Department – NLRB Unit
United States Postal Service